

Section 7

Hearing Officer's Report
Including
Public Comment and Summary of Public
Comment

**CONNECTICUT DEPARTMENT OF ENERGY and ENVIRONMENTAL PROTECTION
PROPOSED CANDLEWOOD LAKE VESSEL LENGTH REGULATION
HEARING OFFICER'S REPORT
SUMMARY OF PUBLIC COMMENTS
EXPLANATORY STATEMENT FOR FINAL REGULATIONS
May 7, 2012**

BOATING SAFETY

(Amendment of the Regulations of the Connecticut State Agencies Section 15-121-B15a)

Proposed 29 November 2011
Public Hearing 4 January 2012
Close of Comment 27 January 2012

Introduction

In November 2011, the Boating Division of the Connecticut Department of Energy and Environmental Protection (DEEP) proposed to amend Section 15-121-B15a of the Regulations of the Connecticut State Agencies (RCSA) to implement a vessel size limit on Candlewood Lake. This proposal was made pursuant to the requirements of Special Act 10-3 (Appendix A). In accordance with the Uniform Administrative Procedure Act (UAPA, Chapter 54 of the Connecticut General Statutes), this proposal was noticed in the Connecticut Law Journal on 29 November 2011 (Appendix B) and a public hearing was held at the Whisconier Middle School in Brookfield on 4 January 2012. Eleanor Mariani, Director of the Boating Division, was designated by DEEP's Commissioner as the Hearing Officer (Appendix B). Public comment was accepted until 27 January 2012. This is the Hearing Officer's report, within which comments received at the public hearing and during the comment period are reported and considered pursuant to the requirements of the UAPA, and changes to the proposed regulations based on those comments are introduced and discussed.

Background

In July 2009 the Connecticut General Assembly (CGA) passed Special Act 09-12 which directed the Department of Environmental Protection (DEP, antecedent of the DEEP) to work with Chief Executive Officers (CEOs) of the five towns surrounding Candlewood Lake to make recommendations concerning the maximum boat length and motor size to be permitted on Candlewood Lake.

Towards that end, and in cooperation with the CEOs of the surrounding towns and the Candlewood Lake Authority (CLA), the DEP undertook a shoreline boat count on 19 August 2009 and conducted a survey of stakeholder perceptions in the months following (Appendix C). As a result, the DEP in consultation with the CEOs recommended that no horsepower limit be implemented because of the inherent difficulties in enforcing such a limit on vessels with inboard engines, a type favored for use on Candlewood Lake. However, a recommendation was made to limit the size of vessels on the lake to under 26 feet, provided that the existing fleet of

oversized vessels is “grandfathered” so as not to diminish their value. Special Act 10-3 directed the DEEP to implement this recommendation via regulation by 1 January 2012 (Appendix A).

The resultant proposed regulation is the subject here (Appendix D). Under this proposal, persons operating an unauthorized oversized vessel (a vessel 26 feet in length or greater) will be subject to ejection from the lake and/or a fine. The size of the vessel will be determined by the registered length as it appears on its state-issued certificate of registration. Authorization to operate will be given to oversized vessels that have historically been used or that have been ordered for use on Candlewood Lake prior to the effective date of the regulation, and for the lifetime of a given vessel. The Commissioner will accomplish this “grandfathering” function by issuing a numbered decal to the owner of a qualified oversized vessel, the display of which will indicate an oversized vessel’s authorized presence on the lake.

Accommodation is also made for oversized commercial and government vessels and vessels that have the function of maintaining the quality of the lake environment. While there is an anticipated impact to small business, measures protective of business have been included. For example, the proposed regulation will allow a bona-fide marine dealer to operate a non-decaled oversized vessel on the lake for the purpose of demonstration for sale, regardless of whether the vessel qualifies for grandfathering or where the buyer intends to use the vessel.

Implementation of this regulation will have the short term effect of capping the number of oversized vessels on Candlewood Lake, ending the general escalation of vessel size that is taking place on the lake. The long term effect will be to *reduce* the size of the fleet of oversized vessels, as grandfathered oversized vessels age and are removed from service.

Public Comment

Overall, 92 persons provided comment on the proposed regulation. In addition, four persons who attended the public meeting indicated their support or non-support of the proposal by checking off the appropriate box on hearing registration forms, but did not proffer formal comment. These “votes”, mostly unsupportive, raise the count of those persons expressing an opinion to 96 persons. Several persons were not explicit as to their stand on the proposal except to say that the proposal attempt was misguided and was doomed to fail. These are counted as “no” votes. In sum, 82 persons were supportive of the proposed amendment and 14 were against. A summary of these comments is presented in Appendix E, along with a copy of all written comments received into record. Comment given orally at Public Hearing without supporting written comment is also summarized in Appendix E, and is available as an audio file from the DEEP by request.

It is DEEP’s responsibility under the UAPA to “afford all interested persons reasonable opportunity to submit data, views or arguments, orally at a hearing... [and to] consider fully all written and oral submissions respecting the proposed regulation...” Given the opportunity to provide comment on the proposal at hand, many persons also took the opportunity to opine on various other issues relating to the quality of the boating experience on Candlewood Lake. This

included complaints about rafting of boats, boorish behavior, improper sewage disposal, disdain for laws and regulations, etc. Because these comments are not germane to the limited scope of the subject proposal (vessel length), they are not considered further in this report. However, DEEP is grateful for these comments and believes that they will be useful with respect to shaping future efforts to improve the quality of the boating experience on Candlewood Lake.

Independent of the comment process DEEP learned that at least one marine dealer business uses a business model that would allow them to benefit unfairly (but through no fault of their own) against other marine dealers under the proposal as written, so additional language has been introduced into the proposed regulation to provide rules for those businesses operating under this business model. This issue is discussed in detail in the section titled "Hearing Officer's Notes" presented later in this document.

In the next section comments from those who do not support the proposal are presented and considered. In the section following, the supporting comments are presented and considered.

Opposing Comment

Overview

Fourteen persons registered their opposition to the proposed regulation. Of these, three persons provided no reason for their opposition; three (primarily) objected to setting the length at 26 feet for all vessels; two wanted to consider vessel type in combination with vessel length in any proposed ban; two thought the problems on the lake could be addressed through modifying operator behavior through education or enforcement; three pointed to vessel overcrowding; and one thought the proposal to be outright discriminatory in nature. Other issues identified were the high number of bass tournaments, the desire for a sticker program, and the need for better operator training.

Vessel Length and Type

Commenter Skip Clapp made the case that setting a limit for all vessels at under 26 feet ignored the general characteristics of different types of vessels, saying, "I think some type of regulation is necessary...I've owned pontoon boats for many years now and among them a 24' and a 22'. I do know however that larger families have pontoons that are in excess of 26', i.e. 28 and 30 footers. I don't think you can classify these in the same category as some cruisers that are 30 + feet and travel at much greater speeds. Was any thought given to this type of exemption?" (comment by email, 23 December 2011, exhibit 84). This was echoed by commenter Cliff Ricci, saying, "Boat length is not the answer. A 30 foot pontoon boat will not create the wake of a 25 foot cabin cruiser. [It] should be based on other criteria (displacement, horsepower, etc...)" (written comment submitted at public hearing, 4 January 2012, exhibit 85), and by Robert V.H. Weinberg who wrote, "length restrictions will not reduce waves made by speeding boats nor will it reduce the risk of collision or other accidents on the lake. However it will restrict the use of sailing vessels (that have the least amount of impact on the environment) because most sailboats usable by a family of five on the lake would exceed 26 feet. The length restriction on

sailboats if necessary at all should be increased to 35 feet.” (comment by email, 22 December 2012, exhibit 87).

Commenter Ralph Gallagher objected to the proposed regulation as written opining that both length and type of vessels should be considered, saying, “There's a bunch of things that's just incorrect about this. I believe that boats should be limited to some size but I do not believe it should be 26 feet, perhaps pick a number like 30...It's the wakeboard boats making the wakes...To say that the boats over 26 foot are a problem and the bass boats aren't is just hiding your head in the sand.”(Oral Comment at Public Hearing, 4 January 2012, track 5 @ 4:08, track 8 @ 3:40, track 9 @ 2:00, referenced as exhibit 95) This was echoed by commenter Stephen Paduano, who said, “I don't believe that there is any boat that is 26 feet and larger currently on the lake that can make a wake bigger than an 18 foot wakeboard boat...So if the act is being proposed to reduce large wakes it would be discriminatory to just ban boats 26 feet and larger.” (Oral comment at public hearing, 4 January 2012, track 2 @ 5:49, with written supplement, exhibit 88).

Operator Training

Two commenters saw objectionable vessel operation as the problem, not necessarily vessel size. Commenter Karl Kattrein said simply, “It's not the size of the boat, it's how you operate it.” (Oral comment at public hearing, 4 January 2012, track 4 @ 5:30, track 8 @ 5:20, referenced as exhibit 91) Commenter Jim Marquis amplified this thought saying, “The size and length of the boat is not the issue, it really is the displacement of the boat and how you operate the boat. I believe that if a person is at the transitional stage without a purpose...they should be given a summons and a warning.” (Oral comment at public hearing, 4 January 2012, track 5 @ 0:30, referenced as exhibit 89)

Overcrowding

Three persons commented that overcrowding is the problem that should be addressed. Commenter Dave Marsillio suggested that a sticker program could be used to address overcrowding, saying, “I am an advocate of the boat sticker program as I mentioned on Wednesday. The boat size is an issue, but as was said, how can you pick a size. There is no science to help.” (Oral comment at public hearing, 4 January 2012, track 3 @ 7:49, and email, 6 January 2012, exhibit 83). Commenter Jean Hartnett said, “Once again the wrong issue is being addressed. It is the number of boats, not the size that is the issue.” (email, 24 January 2012, exhibit 96) Finally, Marina Owner Mitchel O'Hara said, “I'm finding in my own marina, one of the biggest problems I have...[is with bass boats and tournaments] I've got these people whipping around our bay...they drive like maniacs” and “With no launch fees in place at the various state boat ramps and no boating license required from out of state residents, the usage has no restrictions. This can certainly lead to overcrowding on the weekends. In addition, the large number of fishing tournaments allowed and the number of boats this contributes surely must have a greater effect than the less that 2% of the boats using Candlewood that are over 26'.” (Oral comment at public hearing, 4 January 2012, track 7 @ 3:45, track 8 @ 5:55, see also mail dated January 26, 2012, exhibit 86)

Discriminatory

Two persons used the word “Discriminatory” to describe the proposed regulation. Commenter Linda Marquis said, “It seems like its discriminatory particularly to the people who own property and are living on the lake...” (Oral comment at public hearing, 4 January 2012, track 7 @ 6:20, referenced as exhibit 90). Commenter Stephen Paduano (testimony referenced previously) also used the word, saying, “...So if the act is being proposed to reduce large wakes it would be discriminatory to just ban boats 26 feet and larger.” (Oral comment at public hearing, 4 January 2012, track 2 @ 5:49, with written supplement, exhibit 88).”

Response to Opposing Comment

Overview

This proposed regulation to limit vessel length on Candlewood Lake to under 26 feet is proffered at the direction of the Connecticut General Assembly. The DEEP has no authority by which to change the scope of the proposed regulation. The question is simple then; is there sufficient support to warrant the implementation of this regulation as envisioned by the legislature and do those opposing such implementation identify arguments of sufficient impact so as counter-indicate implementation of the proposed regulation?

We answer opposing arguments below - but first, some precepts. The Commissioner of the DEEP has jurisdiction over all waters of the state, and endeavors to provide universal public access to all such waters. While Commissioner does allow local municipalities to determine operational rules on the waters within their jurisdiction (within limits), the Commissioner will not consider a sticker program as a means to restrict access to a body of water - sticker programs inherently favor local residents which is inimical to the goal of universal public access. Likewise, the Commissioner rarely approves banning individual *classes* of vessels; such bans are also inimical to the goal of universal access. In the case of both sticker programs and vessel class bans, many local jurisdictions have expressed fervent interest in implementing such; if allowed and taken to its logical end, such limitations would result in the *opposite* of the goal of universal public access.

The DEEP achieves its goal of universal public access on Candlewood Lake through two public boat launches; the Lattin’s Cove launch and the Squantz Cove launch. These provide parking for a maximum of 200 vehicles. There are over 50 other access points along the lake, over which the state has *no* control. It can be assumed (if one parking space equals one boat) that the state boat launches account for a *maximum* contribution of 200 vessels at any given time. However, it can also be assumed that vessels so launched are generally less than 26 feet in length, given the complications of trailering and launching a larger vessel. The impact on perceived overcrowding of those 200 vessels launched through the state boat launches is not fully understood, but on 19 August 2009 the DEEP conducted a count of all vessels that included those visible on or at the lake shoreline (those not being operated); over 6,000 shorebound vessels were counted.

Vessel Length and Type

As suggested by commenters, the DEEP considered the possibility of raising the vessel length restriction for certain classes of vessels; namely, pontoon boats up to 30 feet in length and sailboats up to 35 feet in length. Commenters suggest that pontoon boats are limited by design in performance compared to monohull vessels in their size class and are not used in the same aggressive manner as monohull vessels might be. However, DEEP believes that the characterization of pontoon boats as slow and benign is simply outdated; a typical modern 30 foot pontoon boat can accept engines of horsepower rated in the *hundreds* and can easily attain waterskiing speeds. And in general, pontoon boats are less expensive than monohull vessels in the same size class, suggesting that allowing a “pontoon boat exemption” would simply push those persons seeking large monohull vessels who otherwise would not choose a pontoon boat to buy a 30 foot pontoon boat, and to power it with the largest available engines so as to approach the performance of the monohull vessel they were prevented from buying in the first place – thus defeating the purpose of this regulation. After consideration, while maintaining grandfathering provisions for existing oversized vessels, the DEEP prefers to limit *all* non-grandfathered recreational vessels to under 26 feet. In the interest of universal application, consistency, and ease of enforceability, the DEEP prefers to include sailing vessels of 26 feet or over in this restriction.

Commenters who argued that the length limit should be set at over 26 feet also suggested that selection of under 26 feet as the cut-off point is arbitrary and “unscientific.” Arbitrary, no; unscientific, perhaps. Generally speaking, a 26 foot boat approaches the maximum that can be trailered over the road and launched at a state boat launch without special consideration. This creates a natural break-point at around 26 feet. Also, the Coast Guard classifies vessel by length; a Class A vessel includes vessels of less than 16 feet; a Class 1 vessel includes vessels of 16 feet to less than 26 feet; a Class 2 vessel includes vessels from 26 feet to less than 40 feet; and so on. Regulations differ for each class of vessel. This also creates a natural breakpoint at 26 feet. Given that based on the 19 August 2009 shoreline boat count 97 percent of all of the 6000-plus vessels that were counted were under 26 feet, it seems logical to use this length as a regulatory breakpoint to control vessel size escalation while adversely impacting relatively few users. The DEEP prefers to leave the proposed vessel length limit at 26 feet.

Operator Training

Several commenters opined that more mandatory boating education might remedy the user conflict and perceived unsafe conditions on Candlewood Lake. Connecticut was one of the first states to mandate basic boating education and is a leader in safe boating education. The Connecticut safe boating course that leads to certification is a short and broad-based course that is taught to *national standards* in accordance with the laws and regulations of this state and in conjunction with other states through cooperative effort and reciprocity. The current course already emphasizes safe and mannerly behavior, and state regulations codify such expectations.

The DEEP has increased law enforcement presence on Candlewood Lake to enforce regulations that have the effect of enforcing preferred behavior, and is not adverse to providing additional

educational opportunities to boaters on Candlewood Lake with an emphasis on safe and prudent boating – but in addition to the current proposal, not exclusive of it.

Overcrowding

Three commenters thought that the DEEP should address overcrowding as a management tool, not vessel size. The DEEP acknowledges that overcrowding on Candlewood Lake is *one* factor that creates user conflict and potentially unsafe boating situations, but rejects the idea that overcrowding is the *sole* cause of conflict and unsafe boating situations. In the 2009 Candlewood Lake user survey conducted by the DEEP to gather additional information to assist in identifying an effective management strategy, approximately 55 percent of respondents indicated that limiting vessel size would be a positive management step. This was the most popular management choice of those expressing an opinion. The proposal at issue here brings this management strategy to fruition, and fully 85 percent of the comments received during the public comment support it as proposed, as documented in later sections of this report. Therefore the DEEP chooses to move forward with this proposal.

Discrimination

The DEEP has endeavored to create a regulation compliant with Special Act 10-3 that does not unfairly burden or discriminate against property owners living on the lake. In fact, local property owners are favored under this proposed regulation, inasmuch as these persons are presumed to have established a relationship to the lake and are being given the opportunity to grandfather any vessel they own and in existence on the lake at the effective date of the regulation. The prohibition against using a non-grandfathered boat on Candlewood Lake after the effective date of the regulation is universal, meaning that no party is discriminated against.

Supporting Comment

Many persons expressed support for the proposed regulation as a means to begin to address the perceived ongoing erosion of safety and comfort on Candlewood Lake. Commenter Alexandra Scalera said, “I am writing to show my whole hearted support for regulating the length of boats on Candlewood Lake...I have a 20' motor boat and am terrified to take it out on the lake during holidays and weekends. I almost sunk when one of these monsters crossed in front of my bow at top speed so he could get in front of me. The wake was so huge that my bow went under and I had to desperately fight to keep her afloat.” (email, 26 January 2012, exhibit 66) Commenter Terry Metz said, “Not only have the boats gotten increasing larger, it has become much more crowded. With this increase in the size of the boats, the wakes on a weekend sometimes keeps my family off the lake completely. We have experienced wakes that have come over the bow and soaked us in our 19 foot bow rider.” (email, 25 January 2012, exhibit 55) And commenter Robert Jenkins, a Police Officer with the Suffolk County Police Department in New York and currently assigned to their Marine Bureau, summarized the concerns of many, saying, “...over the years I have observed the increase in boat numbers, in weekend boat traffic, and in boat speed, noise and size...I've personally seen people nearly swamped in several different types of small boats (rowboats, small ski boats, etc.) by the excessive wakes from these large boats. These same excessive wakes fuel shoreline erosion and cause harm to moored, anchored, and docked boats. They also create unsafe conditions for

other boats, large and small. Some of these large boats can present environmental risks as they can accommodate larger crowds and may not have adequate sanitary facilities aboard for extended use.” (email, 22 January 2012, exhibit 29). These three comments sufficiently capture the sentiment of 79 additional commenters such that no further discussion is warranted.

Response to Supporting Comment and Proposed Final Wording

Given the overwhelming support for the proposed regulations as written, no changes are proposed to the non-business portion of the regulation. Changes to the proposed regulation as it pertains to business are discussed below.

Hearing Officer’s Notes

As stated in a previous section, given the overwhelming support for the proposed regulations as written, no changes are proposed to the non-business portion of the proposed regulation. However, the DEEP has become aware that at least one business is using a legitimate business model that would allow them to have a virtually limitless supply of oversized vessels that under the rules, as written, DEEP would have no choice but to grandfather.

Consider the “-Max” model. In this business model, multiple dealers are bound together under agreement to share inventory, allowing a single business owner access to an inventory of boats far more extensive than any single dealer could ever maintain. Under the rules as proposed 29 November 2011, DEEP would have no choice but to grandfather all such vessels in shared inventory, whether they existed on-site, in-state or even in-country. Whereas a single independent dealer might have an inventory of 3 oversized vessels, a -Max outlet could rightfully claim an inventory of 20 or more, even if it would be physically impossible to store those vessels at a single location. This defeats the intention of limiting the fleet of oversized vessels and unlevels a playing field that is otherwise leveled by each business’s individual ability to buy, store, and sell large boats.

DEEP now proposes to redress the proposed regulation accordingly. In essence, a new rule is added to say that for businesses operating under the -Max model (inventory shared with remote locations), only a fixed amount of vessels can be claimed for grandfathering and only within a certain amount of time after the regulation is passed. Specifically, we propose that a dealer so operated shall average the total number of oversized vessels sold from the Candlewood Lake outlet over the last five years, and that dealer shall be allowed to grandfather the number of vessels equivalent of one year worth of sales, rounded upward. These vessels shall be identified by the outlet within 60 days of passage of the regulation. In this way, only a finite number of vessels can be grandfathered and that number is determined by the demonstrated success of a given business in selling oversized boats.

Proposed Additional Wording

The following subdivisions are added to proposed subsection (b)(2):

(C) Notwithstanding subparagraph (B) of this subdivision, for any marine dealer located within one of the five municipalities surrounding Candlewood Lake who shares vessel inventory with other businesses that are located outside of the five municipalities surrounding Candlewood Lake, the Commissioner may authorize the number of vessels equal to the average number of oversized vessels sold over the last five years per year, rounded up to the nearest whole number, from that business located within one of the five municipalities surrounding Candlewood Lake.

(D) A marine dealers shall provide proof to the satisfaction of the Commissioner regarding the number of vessels claimed for authorization, and that such vessels are owned by said marine dealer at the time the request to authorize such vessels is made. Said marine dealer shall identify those vessels to be authorized within sixty days of the effective date of this regulation, and on a form provided by the Commissioner.

For clarity, the definition of Marine Dealer has been removed from subdivision (B) and is redesignated as subdivision (E). The final proposed regulation, as modified, is presented in Appendix F.

Hearing Officer's Recommendations

The hearing officer has reviewed comments received at the 4 January 2012 public hearing and written comments received as of 4:00 p.m. on 27 January 2012. Responses to comments germane to the proposed regulations noticed on 29 November 2011 have been addressed to my satisfaction.

Based on review of the information and the aforementioned explanations, the hearing officer recommends that the Commissioner of Energy and Environmental Protection proceed with the proposed amendments to the regulations governing the boating safety.

5/7/12
Date



Eleanor C. Mariani
Designated Hearing Officer
Director, Boating Division

**PROPOSED CANDLEWOOD LAKE VESSEL LENGTH REGULATION
HEARING OFFICER'S REPORT**

LIST OF APPENDICES

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APPENDIX B.....PUBLIC HEARING EXHIBITS
Public Notice (2)
Hearing Officer Designation
22a-6(h) Statement

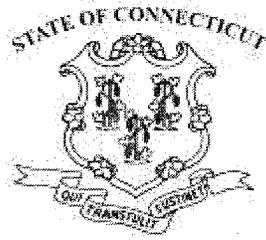
APPENDIX C.....IMPORTANT LINKS
2009 Candlewood Lake Survey Report
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APPENDIX D.....INITIAL REGULATORY PROPOSAL
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APPENDIX E.....TESTIMONY INDEX & SUMMARY AND EXHIBITS

APPENDIX F.....FINAL REGULATORY PROPOSAL
Proposed Regulation (Final)

APPENDIX A
SPECIAL ACT 10-3
And
SPECIAL ACT 09-12



House Bill No. 5241

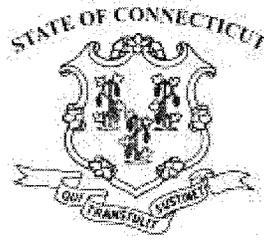
Special Act No. 10-3

AN ACT CONCERNING CANDLEWOOD LAKE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (*Effective from passage*) Not later than January 1, 2012, the Commissioner of Environmental Protection shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to establish a maximum boat length on Candlewood Lake. Such regulations shall be consistent with the recommendations submitted to the joint standing committee of the General Assembly having cognizance of matters relating to the environment pursuant to special act 09-12.

Approved May 18, 2010



House Bill No. 5823

Special Act No. 09-12

AN ACT CONCERNING THE RECREATIONAL USE OF CANDLEWOOD LAKE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

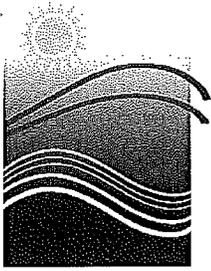
Section 1. (*Effective from passage*) (a) The Commissioner of Environmental Protection shall, in consultation with the chief elected officials, or their designees, of the towns of Brookfield, New Milford, Sherman and New Fairfield and the city of Danbury, make recommendations concerning the maximum boat length and maximum motor size permitted on Candlewood Lake. In making such recommendations, the commissioner and chief elected officials shall consider the following factors, which shall include, but not be limited to: Public safety, public access, public pumpout facilities, noise pollution, user conflict and the carrying capacity of the lake.

(b) Not later than February 1, 2010, the Commissioner of Environmental Protection shall submit such recommendations, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to the environment.

Approved July 2, 2009

APPENDIX B
PUBLIC HEARING EXHIBITS

Public Notice (2)
Hearing Officer Designation
22a-6(h) Statement



Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

**Notice of Intent to Amend the Boating Safety Regulations to Establish a Vessel Length Limit
on Candlewood Lake**

The Commissioner of the Department of Energy and Environmental Protection (DEEP) hereby gives notice of his intent to amend Section 15-121-B15a of the Regulations of the Connecticut State Agencies to establish a vessel length limit on Candlewood Lake. This amendment is being proposed pursuant to Special Act 10-3 and under the authority granted to the Commissioner in Connecticut General Statute Section 15-121(b)(11).

Statement of Purpose: Special Act 10-3 requires the DEEP to propose a regulation implementing a vessel length limit of under 26-feet on Candlewood Lake for the purpose of halting the general escalation of vessel size on the lake, understood to be both a cause and a consequence of user conflict. Under this proposed amendment to existing Candlewood Lake regulations, persons operating an unauthorized oversized vessel will be subject to ejection from the lake and/or a fine. Authorization to operate will be given to oversized vessels that have historically been used or that have been ordered for use on Candlewood Lake prior to the effective date of the proposed regulation, and for the lifetime of a given vessel. Accommodation is made for oversized commercial and government vessels and vessels that have the function of maintaining the quality of the lake environment. While there is an anticipated impact to small business, measures protective of business have been included.

All interested persons are invited to submit comments on the proposed amendment to the Department of Energy and Environmental Protection (DEEP), Bureau of Outdoor Recreation, Boating Division, P.O. Box 280, Old Lyme, CT 06371. All comments should be directed to the attention of Timothy Delgado and must be received by 4:00 PM on January 27, 2012. Comments may be submitted by post, facsimile to (860) 434-3501 or by electronic mail to timothy.delgado@ct.gov.

In addition to accepting written comments, DEEP will also hold the public hearing described below. The Commissioner requests that any person giving oral comment at the hearing also submit a written copy of such comments.

PUBLIC HEARING
January 4, 2012 at 6:30 PM
Seminar Room
Whisconier Middle School
17 W Whisconier Road
Brookfield, CT

Printed on Recycled Paper

79 Elm Street, Hartford, CT 06106-5127
www.ct.gov/deep

Affirmative Action/Equal Opportunity Employer

Copies of the proposed amendment are available for public inspection during normal business hours and may be obtained from Timothy Delgado at the Bureau of Outdoor Recreation, Boating Division, 333 Ferry Road, Old Lyme, Connecticut. The same documents are posted on DEEP's website at the following location:

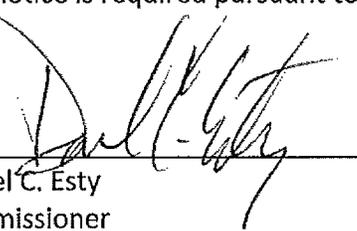
http://www.ct.gov/dep/cwp/browse.asp?a=2586&depNav_GID=1511

For additional information, contact Timothy Delgado of the Boating Division at (860) 447-4354 or timothy.delgado@ct.gov.

DEEP is an affirmative action/equal opportunity employer and service provider. In conformance with the Americans with Disabilities Act, DEEP makes every effort to provide equally effective services for persons with disabilities. Individuals with disabilities who need this information in an alternative format, to allow them to benefit and/or participate in DEEP's programs and services, should call 860-424-3035 or e-mail the ADA Coordinator, at DEP.aaoffice@ct.gov.

Persons who are hearing impaired should call the State of Connecticut relay number 711. Requests for accommodations must be made at least two weeks prior to the program date.

This notice is required pursuant to CGS section 4-168.



Daniel C. Esty
Commissioner

To be published in the CT Law Journal on November 29, 2011

Draft Regulation 15-121-B15a(amended) (PDF)

in SNAP as provided in 7 C.F.R. §§ 273.11(m), (n); (2) pursuant to 21 U.S.C. § 862a and 42 U.S.C. § 608(a)(9), add new section 3040.15 to the UPM that provides the policy regarding technical eligibility criteria for felons, fleeing felons and parole and probation violators who receive or apply for State Supplement; (3) pursuant to section 17b-191(c) of the Connecticut General Statutes revise the technical eligibility criteria for SAGA cash in section 8080.30 of the UPM to include a provision that clarifies that the same requirements under the TFA program also apply to felons, fleeing felons, parole and probation violators who receive or apply for SAGA Cash; and (4) revise section 8540.20 of the UPM to make minor technical changes and to amend language to be consistent with 42 U.S.C. § 608(a)(9).

(C) The legal effects of the regulation, including all of the ways that the regulation would change existing regulations or other laws: The amended language will clarify existing provisions and add new provisions regarding the technical eligibility criteria that apply to individuals who are felons, fleeing felons, parole or probation violators and apply for SNAP, TFA, SAGA Cash and State Supplement benefits.

A copy of the complete text of this regulation is available, at no cost, upon request from the Office of Legal Counsel, Regulations and Administrative Hearings, Department of Social Services, 25 Sigourney Street, Hartford, Connecticut 06106; email: patricia.pion@ct.gov.

All written comments, questions, and concerns regarding this regulation may be submitted within 30 days of the publication of this notice to the Department of Social Services, Office of Legal Counsel, Regulations & Administrative Hearings, 25 Sigourney Street, Hartford, Connecticut, 06106. Attention: Brenda Parrella, Director. A hearing will be scheduled on the proposed regulation if requested by fifteen persons, by a governmental subdivision of an agency or by an association having not less than fifteen members, if notice of the request is received by the Department within fourteen days after the date of publication of this notice.

When submitting correspondence, please refer to DSS Reg. No.10-06/DS.

DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

Notice of Intent to Amend the Boating Safety Regulations to Establish a Vessel Length Limit on Candlewood Lake

The Commissioner of the Department of Energy and Environmental Protection (DEEP) hereby gives notice of his intent to amend Section 15-121-B15a of the Regulations of the Connecticut State Agencies to establish a vessel length limit on Candlewood Lake. This amendment is being proposed pursuant to Special Act 10-3 and under the authority granted to the Commissioner in Connecticut General Statute Section 15-121(b)(11).

Statement of purpose: Special Act 10-3 requires the DEEP to propose a regulation implementing a vessel length limit of under 26-feet on Candlewood Lake for the purpose of halting the general escalation of vessel size on the lake, understood to be both a cause and a consequence of user conflict. Under this proposed amendment to existing Candlewood Lake regulations, persons operating an unauthorized oversized vessel will be subject to ejection from the lake and/or a fine. Authorization to operate will be given to oversized vessels that have historically been used or that

have been ordered for use on Candlewood Lake prior to the effective date of the proposed regulation, and for the lifetime of a given vessel. Accommodation is made for oversized commercial and government vessels and vessels that have the function of maintaining the quality of the lake environment. While there is an anticipated impact to small business, measures protective of business have been included.

All interested persons are invited to submit comments on the proposed amendment to the Department of Energy and Environmental Protection (DEEP), Bureau of Outdoor Recreation, Boating Division, P.O. Box 280, Old Lyme, CT 06371. All comments should be directed to the attention of Timothy Delgado and must be received by 4:00 PM on January 27, 2012. Comments may be submitted by post, facsimile to (860) 434-3501 or by electronic mail to timothy.delgado@ct.gov.

In addition to accepting written comments, DEEP will also hold the public hearing described below. The Commissioner requests that any person giving oral comment at the hearing also submit a written copy of such comments.

PUBLIC HEARING
January 4, 2012 at 6:30 PM
Seminar Room
Whisconier Middle School
17 W Whisconier Road
Brookfield, CT

Copies of the proposed amendment are available for public inspection during normal business hours and may be obtained from Timothy Delgado at the Bureau of Outdoor Recreation, Boating Division, 333 Ferry Road, Old Lyme, Connecticut. The same documents are posted on DEEP's website at the following location:
http://www.ct.gov/dep/cwp/browse.asp?a=2586&depNav_GID=1511.

For additional information, contact Timothy Delgado of the Boating Division at (860) 447-4354 or timothy.delgado@ct.gov.

DEEP is an affirmative action/equal opportunity employer and service provider. In conformance with the Americans with Disabilities Act, DEEP makes every effort to provide equally effective services for persons with disabilities. Individuals with disabilities who need this information in an alternative format, to allow them to benefit and/or participate in DEEP's programs and services, should call 860-424-3035 or e-mail the ADA Coordinator, at DEP.aoffice@ct.gov.

Persons who are hearing impaired should call the State of Connecticut relay number 711. Requests for accommodations must be made at least two weeks prior to the program date.

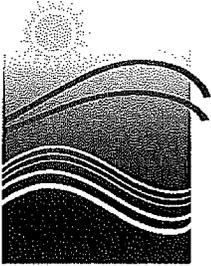
This notice is required pursuant to CGS section 4-168.

Daniel C. Esty
Commissioner

CONNECTICUT INNOVATIONS

Notice of Intent to Adopt Operating Procedures

In accordance with Section 1-121 of the Connecticut General Statutes, notice is hereby given that Connecticut Innovations, Incorporated proposes to adopt Operating Procedures.



Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

Hearing Officer Delegation

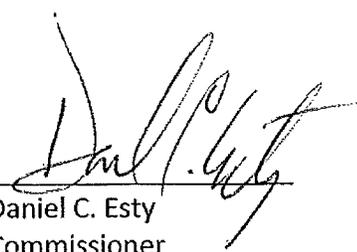
In accordance with the provisions of section 22a-2 of the Connecticut General Statutes, Eleanor C. Mariani, Director of the Boating Division of the Bureau of Outdoor Recreation is hereby appointed as a hearing officer to allow said officer to conduct a public hearing on **January 4, 2012** and to render a decision regarding the proposed revision of Regulations of the Connecticut State Agencies (RCSA) Section 15-121-B15a, as follows:

- The Department of Energy and Environmental Protection (DEEP) proposes to establish a vessel length limit of under 26-feet on Candlewood Lake. Under the proposed regulation, persons operating an unauthorized oversized vessel will be subject to ejection from the lake and/or a fine. As part of this proposed regulation, authorization to operate will be given to oversized vessels that have historically been used or that have been ordered for use on Candlewood Lake prior to the effective date of the proposed regulation, and for the lifetime of a given vessel. Accommodation is also made for oversized commercial and government vessels and vessels that have the function of maintaining the quality of the lake environment. While there is an anticipated impact to small business, measures protective of business have been included.

This action is taken pursuant to, and is authorized by, Special Act 10-3, which requires the DEEP to propose a regulation implementing the vessel length limit for the purpose of halting the general escalation of vessel size on the lake, both a cause and a consequence of user conflict.

Date

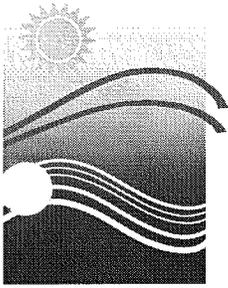
11/28/11


Daniel C. Esty
Commissioner

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Connecticut Department of
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22a-6(h) ANALYSIS

Federal Standards Analysis Pursuant to Section 22a-6(h) of the General Statutes Amendment of Section 15-121-B15a of the Regulations of Connecticut State Agencies

In accordance with the requirements of section 22a-6(h) of the Connecticut General Statutes (CGS), in the matter of the proposed revision of section 15-121-B15a of the Regulations of Connecticut State Agencies (RCSA), the Department of Energy and Environmental Protection has performed a comparison with federal provisions, which is set out below.

- Regarding the implementation of a vessel length restriction of less than 26 feet for Candlewood Lake, and a grandfathering provision contained therein to accommodate the existing fleet of oversized vessels currently in use on the lake, there is no analogous federal standard for this activity.

4 January 2012

Date

/s/ Eleanor C. Mariani

Eleanor C. Mariani
Director, Boating Division

Controlling legal authority:

The commissioner may adopt regulations pertaining to activities for which the federal government has adopted standards or procedures.

All provisions of such regulations which differ from federal standards or procedures shall be clearly distinguishable from such standards or procedures either on the face of the proposed regulation or through supplemental documentation accompanying the proposed regulation at the time of the notice concerning such regulation required under section 4-168.

An explanation for all such provisions shall be included in the regulation-making record required under chapter 54 and shall be publicly available at the time of the notice concerning the regulation required under section 4-168.

This subsection shall apply to any regulation for which a notice of intent to adopt is published on and after July 1, 1999.

APPENDIX C
IMPORTANT LINKS

2009 Candlewood Lake Survey Report (PDF 1.52M)

Candlewood Lake Boat Count

Candlewood Lake Recommendations

IMPORTANT LINKS

Available on the Boating Page (Regulations) of the CT DEEP Website:

2009 Candlewood Lake Survey Report (PDF 1.52M)

http://www.ct.gov/dep/lib/dep/boating/boating_forms/candlewood_survey_results_12-15-2009.pdf

Candlewood Lake Boat Count

http://www.ct.gov/dep/lib/dep/boating/candlewood_boat_count_8-19-09.pdf

Candlewood Lake Recommendations

http://www.ct.gov/dep/lib/dep/boating/candlewood_lake_recommendations.pdf

APPENDIX D
INITIAL REGULATORY PROPOSAL

Statement of Purpose
Proposed Regulation
Agency Fiscal Estimate
Small Business Impact
Regulatory Flexibility Analysis

STATEMENT OF PURPOSE
DRAFT CANDLEWOOD LAKE VESSEL LENGTH RESTRICTION
REGULATION

In 2010 the Connecticut General Assembly (CGA) passed Special Act 10-3, which directed the DEP to propose a regulation implementing a vessel length limit of under 26-feet on Candlewood Lake for the purpose of halting the general escalation of vessel size on the lake, both a cause and a consequence of user conflict.

Under the proposed regulation, persons operating an unauthorized oversized vessel will be subject to ejection from the lake and/or a fine, and the size of the vessel will be determined by the registered length as it appears on its state-issued certificate of registration.

As part of this proposed regulation, authorization to operate will be given to oversized vessels that have historically been used or that have been ordered for use on Candlewood Lake prior to the effective date of the proposed regulation, and for the lifetime of a given vessel. The Commissioner will accomplish this "Grandfathering" function by issuing a numbered decal to the owner of a qualified oversized vessel, the display of which will indicate an oversized vessel's authorized presence on the lake.

Accommodation is also made for oversized commercial and government vessels and vessels that have the function of maintaining the quality of the lake environment. While there is an anticipated impact to small business, measures protective of business have been included.

Implementation of this regulation will have the short term effect of capping the number of oversized vessels on Candlewood Lake, and ending the general escalation of vessel size that is taking place on the lake. The long term effect will be to *reduce* the size of the fleet of oversized vessels, as vessels age and are removed from service.

DRAFT CANDLEWOOD LAKE VESSEL LENGTH RESTRICTION REGULATION

Rev. Date 25 JUL 11, Authority by Special Act 10-3

(effective from passage)

Section 15-121-B15a of the Regulations of the Connecticut State Agencies is amended by adding subsection (b) as follows:

(b) No person shall operate a registered vessel that is 26 feet in length or greater on the waters of Candlewood Lake unless such operation has been exempted or authorized by the Commissioner under this subsection. For the purpose of this subsection the registered length of the vessel shall be the length identified on the vessel's certificate of number awarded by this state, by another state or by the United States pursuant to the provisions of the federal Boat Safety Act of 1971, or marine document issued by the United States Coast Guard.

(1) The following vessels are exempt from the requirements of this subsection:

(A) vessels that while on the waters of Candlewood Lake are operated exclusively by authorized law enforcement personnel in the performance of official duties;

(B) vessels that while on the waters of Candlewood Lake are used exclusively for invasive species control, sewage transfer, or marine structure or infrastructure construction or maintenance; and

(C) vessels displaying a valid marine dealer registration number that are being demonstrated for sale, test run in connection with maintenance or repair, or surveyed by a certified marine surveyor.

(2) The Commissioner shall authorize the operation of vessels that are 26 feet in length or greater on the waters of Candlewood Lake that meet one of the following conditions:

(A) The vessel is owned by a person or entity, and such person or entity purchased and registered the vessel prior to the effective date of this regulation and presents evidence to the Commissioner of current or past owned or rented lakefront storage space or dockspace for such vessel, or can otherwise document use of the subject vessel on the waters of Candlewood Lake for more than ten consecutive days or twenty days in aggregate, over the twenty four months preceding the effective date of this regulation.

(B) The vessel is consigned to a marine dealer by a person meeting the conditions of subparagraph (A) of this subdivision or is owned by a marine dealer located in one of the five surrounding towns (Danbury, Brookfield, New Milford, Sherman, or New Fairfield) where the vessel was present in inventory, ordered for inventory, or consigned to the marine dealer prior to the effective date of this regulation. For the purpose of this section, a marine dealer is a business that

possesses a Marine Dealer Registration Number pursuant to Section 15-145 of the Connecticut General Statutes, or that uses a North American Industry Classification System (NAICS) or Standard Industry Classification (SIC) code for vessels sales in tax filings, and can demonstrate the use of such code in tax filings prior to the effective date of passage.

(3) The Commissioner shall provide permanent numbered decals that shall be attached to those vessels that are 26 feet in length or greater that are authorized by the Commissioner to operate on the waters of Candlewood Lake and that are not exempted in this section. Until December 31, 2013, the Commissioner shall issue one such authorizing decal for each vessel 26 feet or greater in length meeting one of the conditions of subdivision (2) of this subsection. The authorizing decal shall be affixed to the starboard side of the vessel such that the decal is not obstructed from view: (1) on the hull and above the waterline and closer to the stern than the bow or (2) on a superstructure or windshield near the operator's station. The authorizing decal shall be permanently affixed to the vessel for the life of the vessel. The authorizing decal shall not be transferable to other vessels or other hulls. Requests for an authorizing decal shall be made on an application approved by the Commissioner.

(4) The Commissioner may issue a replacement authorizing decal at any time upon written application.

(5) An individual vessel owner or marine dealer who is denied an authorizing decal or a replacement authorizing decal by the Commissioner or the Commissioner's designee may apply to the Commissioner for reconsideration of the denial. The Commissioner may review such application and may elect to issue an authorizing decal or a replacement decal after reviewing additional information presented by the individual vessel owner or marine dealer.

(6) The Commissioner may designate the Candlewood Lake Authority (CLA) to act as agent in issuing authorizing decals upon receipt of written agreement from the executive officer of the lake authority. The Commissioner may designate any or each of the governments of the several lakefront towns (Danbury, Brookfield, New Milford, Sherman, and New Fairfield) to act as agent in issuing authorizing decals upon receipt of written agreement from the town's executive officer. The CLA or any town so designated may withdraw from being a designated agent upon written request by the Chairman of the CLA or that town's executive officer to the Commissioner, and shall be effective forty-five (45) days from the date which the written withdrawal is received by the Commissioner.

(7) Effective from the date of passage, any law enforcement officer or lake patrolman duly authorized to enforce this section may terminate the operation of a vessel that is in violation of this section. Effective 6 months from the date of passage, operation of a registered vessel on the waters of Candlewood Lake that is 26 ft or greater and that does not have an authorizing decal issued by the Commissioner shall be an infraction.

DRAFT AGENCY FISCAL ESTIMATE OF PROPOSED REGULATION

Agency Submitting Regulation: Department of Environmental Protection **Date:** July 25, 2011

Subject Matter of Regulation: Boating Safety – Candlewood Lake Vessel Length Restriction

Regulation Section No.: 15-121-B15a (b) (NEW)

Statutory Authority: Special Act 10-03

Other Agencies Effected: None

Effective Date Used In Cost Estimate: July 25, 2011

Estimate Prepared By: Eleanor C. Mariani, Director, Boating Division **Telephone No.:** 860-434-8638

ESTIMATE OF COST OR REVENUE IMPACT OF PROPOSED REGULATION

Agency: Environmental Protection

Fund Affected: Boating

	First Year	Second Year	Full Operation
Number of Positions	Incidental	Incidental	Incidental
Personal Services	Incidental	Incidental	Incidental
Other Expenses	\$2000.00*	\$500.00*	Incidental
Equipment	0	0	0
Grants	0	0	0
Total State Cost	0	0	0
Estimated Revenue Gain	0	0	0
Total Net State Cost	0	0	0

*Cost of printing and mailing of decals, and associated recordkeeping materials

Explanation of State Impact of Regulation:

The proposed change to this section of regulation will implement vessel length restrictions on Candlewood Lake as directed by Special Act 10-03. No additional staff is required to implement the regulation. The existing fleet of oversized vessels will be grandfathered. Such vessels shall be required to display an authorizing decal issued by the Commissioner or an agent of the Commissioner. The cost of decals, postage and recordkeeping material is projected above in the "Other Expenses" section. All other costs are expected to be incidental.

Explanation of Municipal Impact of Regulation:

The DEP will be the lead and, if necessary, the sole agency implementing the regulation and issuing authorizing decals. Municipal participation is voluntary. The impact to any participating municipality is expected to be minimal and incidental.

Explanation of Small Business Impact of Regulation:

The DEP anticipates an unavoidable impact to small business. These impacts are assessed in the Small Business Impact statement.

Is a regulatory flexibility analysis required pursuant to C.G.S. 4-168a?

A regulatory flexibility analysis has been prepared and is attached.

DRAFT SMALL BUSINESS IMPACT STATEMENT

Prior to adopting a new section or amendment to a regulation, Section 4-168a of the Connecticut General Statutes (C.G.S.) requires that each state agency consider the effect of such action on small businesses as defined in C.G.S. Section 4-168a. When such regulatory action may have an adverse effect on small businesses, C.G.S. Section 4-168a directs the agency to consider regulatory requirements that will minimize the adverse impacts on small businesses if the addition of such requirements (1) will not interfere with the intended objectives of the regulatory action and (2) will allow the new section or amendment to remain consistent with public health, safety and welfare.

State Agency submitting proposed regulations: **Department of Environmental Protection**

Subject matter of Regulation: **Candlewood Lake Vessel Length Restriction**

In accordance with C.G.S. Section 4-168a, staff analyzed the effect on small businesses of the proposed regulations and determined the following:

Check all appropriate boxes:

- The regulatory action will not have an effect on small businesses.
- The regulatory action will have an effect on small businesses, but will not have an adverse effect on such small businesses.
- The regulatory action may have an adverse effect on small businesses, and no alternative considered would be both as effective in achieving the purpose of the action and less burdensome to potentially effected small business. Alternatives considered include the following:
- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
 - (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
 - (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
 - (4) The establishment of performance standards for small businesses to replace design or operational standards required in the new section or amendment; and
 - (5) The exemption of small businesses from all or any part of the requirements contained in the new section or amendment.
- The regulatory action will have an adverse effect on small businesses that cannot be minimized in a manner that is consistent with public health, safety and welfare (see explanation below, and accompanying Regulatory Flexibility Analysis).

Has the State agency listed above notified the Department of Economic and Community Development (DECD) of its intent to take the proposed action and completed the Agency Fiscal Estimate of Proposed Regulations? The Department notified DECD on X, X, 2011

An agency fiscal estimate has been completed.

Explanation of Impact:

The DEP is directed by Special Act 10-03 to prepare regulations implementing a vessel length limit on Candlewood Lake. Under these regulations as drafted, persons operating a vessel of 26-feet or longer (an "oversized vessel") will be subject to ejection from the lake and/or a fine, except that the *existing fleet* of oversized vessels will be authorized for use on Candlewood Lake for the life of the vessel.

In order to minimize the adverse affect on businesses who sell and broker oversized vessels used on Candlewood Lake, this proposed regulation recognizes as part of the *existing fleet* those oversized vessels that, by the effective date of this regulation, are in stock or are ordered for stock by marine dealers who are located in one of the five surrounding municipalities. This proposed regulation also allows a marine dealer or certified marine surveyor to demonstrate or test-run *any* oversized vessel on Candlewood Lake, so long as the vessel displays a valid marine dealer registration number. This latter exemption is included to assist businesses that are based on Candlewood Lake and that sell, repair or assess oversized vessels for use elsewhere.

In addition, certain oversized vessels that are used exclusively for business related purposes while on Candlewood Lake, such as those involved in structure or infrastructure repair or maintenance, are exempted from this regulation.

As noted above, this proposed regulation contains considerations for marine dealers who are located in one of the five municipalities that surround Candlewood Lake. Based on an informal study, there are about a dozen such marine dealers. Of those, about half deal in oversized vessels. In March 2010 these dealers reported (in aggregate) about ten oversized vessels in stock, about ten on order, and approximately 100 sold over the last three years. It is impossible to gauge with precision the affect this proposed regulation will have on local marine dealers, however, an on-water survey performed 19 August 2009 revealed only 110 vessels that were 26 feet in length or greater on Candlewood Lake. This suggests that a large share of the oversized vessels purchased from local dealers are used somewhere other than on Candlewood Lake, and such sales would be unaffected by this regulation. In the short term, any oversized vessel authorized for use on Candlewood Lake could maintain or increase in value, regardless of whether it is in the hands of a consumer or a business. Once the availability of such vessels dwindles, it is expected that most if not all consumers who might previously have opted for an oversized vessel will now opt for the largest legal vessel they can obtain, however, it should be acknowledged that some consumers may simply choose not to buy and some business may be lost. Given the requirements of Special Act 10-03, such loss is unavoidable.

DRAFT REGULATORY FLEXIBILITY ANALYSIS

AGENCY SUBMITTING REGULATION: Environmental Protection

DATE: April 1, 2011

SUBJECT MATTER OF REGULATION: Candlewood Lake Vessel Length

REGULATION SECTION NUMBERS: 15-121-B15a

STATUTORY AUTHORITY: S.A. 10-03

OTHER AGENCIES AFFECTED: None

EFFECTIVE DATE USED IN REGULATORY FLEXIBILITY ANALYSIS: 07/25/11

ANALYSIS PREPARED BY: Eleanor C. Mariani, Director TELEPHONE: (860)-434-8638

REGULATORY FLEXIBILITY ANALYSIS

Connecticut General Statute Section 4-168a, as amended, states that for proposed regulations that impact small business, the “agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulations on small business:

- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
- (4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
- (5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

In 2009 the Connecticut General Assembly (CGA), through Special Act 09-12, directed the DEP to make recommendations regarding a vessel length and engine size limit on Candlewood Lake. Accordingly, the DEP in consultation with the executive officers of the five surrounding municipalities, proffered a recommendation to limit vessel size on the lake to vessels under 26-feet, but recommended that no engine limit size be adopted.

In 2010 the CGA, through Special Act 10-03, directed the DEP to prepare regulations implementing the recommended vessel length limit.

With respect to regulatory flexibility and its application to the regulations mandated by Special Act 10-03 and proposed herewith:

- (1) The establishment of less stringent compliance or reporting requirements for small businesses is not consistent with the intent of Special Action 10-03;
- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses is not consistent with the intent of Special Act 10-03;
- (3) The consolidation or simplification of compliance or reporting requirements for small businesses is not relevant to this proposal;
- (4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation is not relevant to this proposal; and
- (5) **The exemption of small businesses from all or any part of the requirements contained in the proposed regulation is accommodated where possible.**

As part of the subject regulatory proposal, the DEP proposes to authorize the operation of oversized vessels that have already been *purchased* or *ordered for stock* by a business located in one of the five municipalities surrounding Candlewood Lake. This grandfathering function is included in part to protect the value of those vessels that are or will be in the hands of marine dealers. For a marine dealer to qualify an oversized vessel for an authorizing decal, the dealer must have such a vessel in inventory or have ordered such a vessel for inventory by the effective date of this regulation.

In addition, exemptions are included for oversized vessels that have certain specific business functions, such as vessels that are used exclusively for marine structure or infrastructure improvements while on Candlewood Lake. Also, consideration is given to those marine dealers who are based on Candlewood Lake and who demonstrate oversized vessels on the lake *for use elsewhere*, by allowing oversized vessels registered with a Marine Dealer Registration Number to be operated for *demonstration and test purposes only* without the benefit of an authorizing decal.

APPENDIX E
TESTIMONY INDEX & SUMMARY AND EXHIBITS

See Section 7b (PDF)

APPENDIX F
FINAL REGULATORY PROPOSAL

Proposed Regulation (Final)

CANDLEWOOD LAKE VESSEL LENGTH RESTRICTION REGULATION

Rev. Date 7 MAY 12, Authority by Special Act 10-3

(effective from passage)

Section 15-121-B15a of the Regulations of the Connecticut State Agencies is amended by adding subsection (b) as follows:

(b) No person shall operate a registered vessel that is 26 feet in length or greater on the waters of Candlewood Lake unless such operation has been exempted or authorized by the Commissioner under this subsection. For the purpose of this subsection the registered length of the vessel shall be the length identified on the vessel's certificate of number awarded by this state, by another state or by the United States pursuant to the provisions of the federal Boat Safety Act of 1971, or marine document issued by the United States Coast Guard.

(1) The following vessels are exempt from the requirements of this subsection:

(A) vessels that while on the waters of Candlewood Lake are operated exclusively by authorized law enforcement personnel in the performance of official duties;

(B) vessels that while on the waters of Candlewood Lake are used exclusively for invasive species control, sewage transfer, or marine structure or infrastructure construction or maintenance; and

(C) vessels displaying a valid marine dealer registration number that are being demonstrated for sale, test run in connection with maintenance or repair, or surveyed by a certified marine surveyor.

(2) The Commissioner shall authorize the operation of vessels that are 26 feet in length or greater on the waters of Candlewood Lake that meet one of the following conditions:

(A) The vessel is owned by a person or entity, and such person or entity purchased and registered the vessel prior to the effective date of this regulation and presents evidence to the Commissioner of current or past owned or rented lakefront storage space or dockspace for such vessel, or can otherwise document use of the subject vessel on the waters of Candlewood Lake for more than ten consecutive days or twenty days in aggregate, over the twenty four months preceding the effective date of this regulation.

(B) The vessel is consigned to a marine dealer by a person meeting the conditions of subparagraph (A) of this subdivision or is owned by a marine dealer located in one of the five surrounding municipalities (Danbury, Brookfield, New Milford, Sherman, or New Fairfield) where the vessel was present in inventory,

ordered for inventory, or consigned to the marine dealer prior to the effective date of this regulation.

(C) Notwithstanding subparagraph (B) of this subdivision, for any marine dealer located within one of the five municipalities surrounding Candlewood Lake who shares vessel inventory with other businesses that are located outside of the five municipalities surrounding Candlewood Lake, the Commissioner may authorize the number of vessels equal to the average number of oversized vessels sold over the last five years per year, rounded up to the nearest whole number, from that business located within one of the five municipalities surrounding Candlewood Lake.

(D) A marine dealers shall provide proof to the satisfaction of the Commissioner regarding the number of vessels claimed for authorization, and that such vessels are owned by said marine dealer at the time the request to authorize such vessels is made. Said marine dealer shall identify those vessels to be authorized within sixty days of the effective date of this regulation, and on a form provided by the Commissioner.

(E) For the purpose of this section, a marine dealer is a business that possesses a Marine Dealer Registration Number pursuant to Section 15-145 of the Connecticut General Statutes, or that uses a North American Industry Classification System (NAICS) or Standard Industry Classification (SIC) code for vessels sales in tax filings, and can demonstrate the use of such code in tax filings prior to the effective date of passage.

(3) The Commissioner shall provide permanent numbered decals that shall be attached to those vessels that are 26 feet in length or greater that are authorized by the Commissioner to operate on the waters of Candlewood Lake and that are not exempt in accordance with this section. Until December 31, 2013, the Commissioner shall issue one such authorizing decal for each vessel 26 feet or greater in length meeting one of the conditions of subdivision (2) of this subsection. The authorizing decal shall be affixed to the starboard side of the vessel such that the decal is not obstructed from view: (1) on the hull and above the waterline and closer to the stern than the bow or (2) on a superstructure or windshield near the operator's station. The authorizing decal shall be permanently affixed to the vessel for the life of the vessel. The authorizing decal shall not be transferable to other vessels or other hulls. Requests for an authorizing decal shall be made by written application approved by the Commissioner.

(4) The Commissioner may issue a replacement authorizing decal at any time upon written application.

(5) An individual vessel owner or marine dealer who is denied an authorizing decal or a replacement authorizing decal by the Commissioner or the Commissioner's designee may apply to the Commissioner for reconsideration of the denial. The Commissioner may review such application and may elect to issue an authorizing decal or a replacement decal after reviewing additional information presented by the individual vessel owner or marine dealer.

(6) The Commissioner may designate the Candlewood Lake Authority (CLA) to act as agent in issuing authorizing decals upon receipt of written agreement from the executive officer of the lake authority. The Commissioner may designate any or each of the governments of the several lakefront municipalities (Danbury, Brookfield, New Milford, Sherman, and New Fairfield) to act as agent in issuing authorizing decals upon receipt of written agreement from the municipality's executive officer. The CLA or any municipality so designated may withdraw from being a designated agent upon written request by the Chairman of the CLA or that municipality's executive officer to the Commissioner, and shall be effective forty-five (45) days from the date which the written withdrawal is received by the Commissioner.

(7) Effective from the date of passage, any law enforcement officer or lake patrolman duly authorized to enforce these regulations may terminate the operation of a vessel that is in violation of this section. Effective 6 months from the date of passage, operation of a registered vessel on the waters of Candlewood Lake that is 26 ft or greater and that does not have an authorizing decal issued by the Commissioner shall be an infraction.